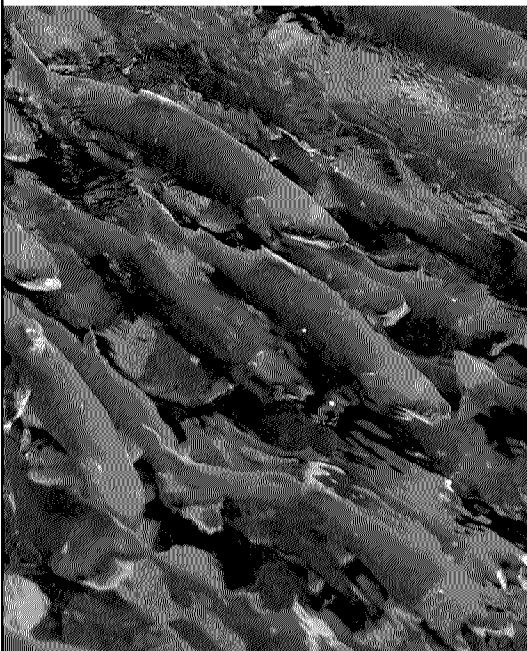




Oregon CZARA

Tillamook Bay Watershed Council February 25, 2014



EPA Region 10, OWW and
Oregon DEQ



WHAT WE WILL DISCUSS

- Brief background on CZARA & Oregon's Coastal Nonpoint Program
- Oregon Settlement Agreement and Program Decisions
- Remaining Issues to Address
- The Path Forward

Coastal Zone Act Reauthorization Amendments (CZARA)



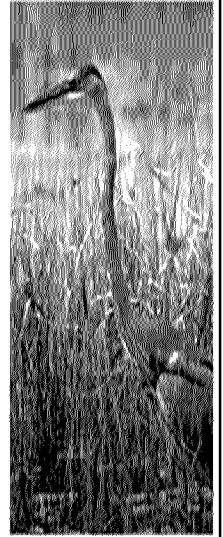
- Enacted Nov. 5, 1990; Jointly administered by EPA & NOAA; EPA published (g) guidance in Jan. 1993
- Applies to coastal states and territories that have approved Coastal Zone Management Programs under CZMA (which NOAA administers)
- Originally 29 states & territories; 5 more added later; Alaska dropped out in 2011
- CZARA = CZMA Section 6217, which requires states that choose to participate in NOAA's CZMP to develop coastal nonpoint pollution control programs (CNPCPs)

CZARA's Purpose & Mandate



- States must “prepare and submit” to NOAA & EPA CNPCPs that “shall be closely coordinated with State & local WQ plans & programs developed pursuant to sections 208, 303, 319, & 320” of CWA.
- Specifically, “State programs shall serve as an update and expansion of the State NPS management program developed under section 319”
- Technology-based to maximize pollution reduction & economically achievable
- 56 MMs across these categories: **Agriculture, Urban, Forestry, Marinas, Hydromodification, Wetlands**
- *Each state shall also contain... additional management measures... necessary to achieve and maintain applicable water quality standards... and protect designated uses.*

CZARA's "Penalty Provision"



- Statute calls for EPA Administrator to withhold section 319 funds for any coastal state that "has failed to submit an approvable program"
 - ...For FY 1999 and each fiscal year thereafter, 30 percent of the amount awarded for FY 1998 or other preceding fiscal year.
 - The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.
- Similar clause for withholding NOAA's 306 funds



CZARA Progress in Oregon

- 1995 – Oregon submitted its Coastal Non-point Source Control Program to NOAA/EPA
- 1998 – NOAA/EPA completes review and identifies issues to be addressed
- 2004 – NOAA/EPA provides further review
- 2007-Oregon submits revisions
- 2008- NOAA/EPA provide further review
- Note: Consistency in Findings

Oregon Lawsuit Overview



- NWEA sued NOAA and EPA for failing to fully approve (without conditions) or disapprove OR's CNPCP. The parties settled Summer 2010. NWEA's primary concern was impacts from timber harvesting.
- To provide a basis for settlement, ODEQ committed to:
 - Implement a TMDL approach with specific source delineations and enforceable load allocations for all significant NPS including forestry – Mid-Coast TMDL
 - Combine this enforceable approach with identified BMPs that, if implemented, provide a safe harbor from enforcement
 - Issue implementation orders to significant sources
- Agreement established timeline with milestones to approve or disapprove OR's CNPCP by 2014 .

Oregon SA: Critical Deadlines



- By Dec. 31, 2012, NOAA-EPA provide ODEQ an initial assessment of the viability of its TMDL strategy for achieving WQS and addressing OR's remaining forestry conditions.
 - NOAA-EPA issued Dec. 2012 letter stating that OR's proposed strategy was off-track and not likely to achieve WQS or adequately address the forestry conditions.
- By Nov. 15, 2013*, NOAA-EPA must publish a decision for public notice & comment on our intent to approve or disapprove OR's CNPCP. Intent to disapprove requires 90-day public comment period.
 - *Federal shutdown resulted in delays & grounds for new timeline. Proposed decision published on Dec. 19, 2013.
 - Public Comment Period closes March
 - EPA and NOAA to issue a final decision on May 15, 2014



Oregon's Unmet Conditions

- **Additional MMs for Forestry**
 - Increase protections for medium, small & non-fish-bearing "Type N" streams
 - Increase protections for landslide prone areas
 - Address impacts from forestry roads, esp. legacy roads
 - Ensure adequate stream buffers for application of certain chemicals, esp. aerial pesticide spraying on steep slopes
- **New Development** — "reduce average annual TSS loads by 80%"— post-construction
- **OSDS** — "Inspect OSDS at a frequency adequate to ascertain whether OSDS are failing"



Oregon's Unmet Conditions

- New Development – reduce average annual TSS loads by 80% - post construction
- OSDS – Inspect OSDS at a frequency adequate to ascertain whether OSDS are failing



Oregon Unmet Conditions

Additional Forestry Measures

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EPA's Pesticide Quandary

- In 1998, NOAA/EPA placed a condition on Oregon's CNPCP that they needed to provide adequate buffers for aerial application of herbicides for non-fish-bearing streams.
- Oregon claims they follow EPA labeling requirements and do not need to adopt additional state rules.
- NMFS (part of NOAA) has issued several BiOps saying EPA needs to change pesticide labels to provide greater protection of salmon. Litigation has resulted in one of those BiOps being remanded to NMFS for reconsideration.
- EPA has not yet taken action, but is negotiating with NMFS on suitable solution. No EPA decision is expected until after Nov. 15 SA deadline.



NWEA's Agriculture Concerns

- NWEA has repeatedly flagged concerns with OR's programs for meeting the Ag MMs in letters & video
- NOAA-EPA decided in 2004 that OR met the Ag MMs, however OR is not effectively implementing key ag programs
- CNPCP approval assesses only whether states have processes in place for implementing the MMs, not how well the state implements or enforces those programs
- NOAA-EPA decision document tentatively concludes that the state has satisfied its agriculture conditions, with strong recommendations to strengthen their efforts
- This decision may appear to conflict with comments from NMFS (part of NOAA) about inadequacy of OR's ag. efforts
- EPA-NOAA are inviting public comment on OR's Ag program.



Options following Notice of Intent to Disapprove

- If OR provides a basis for approval by next May, agencies fully approve state CNP by 5/15/14 deadline
- If OR provides a realistic timeline for finalizing a basis for approval, NOAA/EPA may opt to negotiate SA timeline extension with NWEA
- If OR does not provide a basis for approval by next May or foreseeable future, Agencies disapprove OR on 5/15/2014